The M. E. Young Co. and/or Team Recon, Incorporated and Mark E. Young *and* Larry Isaacs *and* Marcus S. Collins *and* James M. Stratton *and* Plumbers Local Union No. 98 and Pipefitters Local Union No. 636, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO. Cases 7–CA–34987, 7–CA–35163, 7–CA–35163(2), and 7–CA–35822

August 30, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND FOX

Upon charges filed by Larry Isaacs on September 13, 1993, Marcus Collins on November 1, 1993, James Stratton on November 17, 1993, and the Unions on April 13, 1994, the General Counsel of the National Labor Relations Board issued a second consolidated amended complaint (complaint) on May 31, 1994, against the M. E. Young Co. and/or Team Recon, Incorporated and Mark E. Young, an individual, the Respondents, alleging that they have violated Section 8(a)(1) and (3) of the National Labor Relations Act.

Thereafter, on October 17, 1994, during the hearing on the complaint in Cases 7–CA–34987, 7–CA–35163, 7–CA–35163(2), 7–CA–35822, and 7–RC–20163 before Administrative Law Judge John West, the parties reached an informal settlement agreement resolving the unfair labor practice allegations in Cases 7–CA–34987, 7–CA–35163, 7–CA–35163(2), and 7–CA–35822. Upon motion of the General Counsel, the judge, on February 28, 1995, issued an order approving and making part of the record the settlement agreement and notice to employees executed by the parties.[1]

The settlement agreement required that the Respondents make installment payments, and further provided as follows at paragraph 5:

> It is further agreed that in case of non-compliance with any of the terms of this settlement agreement by the Charged Parties, including the failure to make timely installment payment of the monies as set forth in the settlement agreement, on motion for summary judgment by the General Counsel, the Answers of the Charged Parties shall be considered withdrawn. The Board shall issue an Order requiring the Charged Parties to Show Cause why said Motion of the General Counsel should not be granted. The Board may then, without necessity of trial, find all allegations of the Second Consolidated Complaint to be true and make findings of fact and conclusion of law consistent with those allegations, adverse to the Charged Parties, on all issues raised by the Second Consolidated Complaint. The Board may then issue an Order providing full remedy for the violations so found as is customary to remedy such violations, including but not limited to the provisions of this settlement agreement. The Parties further agreed that a Board Order and a U. S. Court of Appeals judgment may be entered hereon ex parte.

On March 22, 1996, the General Counsel advised the Respondents that the Regional Compliance Office had reported that since the approval of the settlement agreement, the Respondents had frequently been and were currently delinquent and untimely with their installment payments to the discriminatees without adequate explanation or reason. The Respondents were further advised, ''that if . . . settlement payments are not made current by the end of this month, I shall recommend that the Region invoke paragraph 5 of the Settlement Agreement attachment.''

Thereafter, by letter dated March 27, 1996, the General Counsel acknowledged receipt of certain payments by the Respondents on March 26, 1996, but further advised the Respondents that they were not current with the settlement agreement payment obligations and specifically informed them of the amounts due by March 31, 1996.

Because of the Respondents' noncompliance with the terms of the settlement agreement in these matters by the failure to make timely installment payments to the discriminatees, and pursuant to paragraph 5 of the settlement agreement attachment, the Respondents have withdrawn any answers to the second consolidated complaint. No subsequent answers have been filed.

On July 25, 1996, the General Counsel filed a Motion for Default Summary Judgment with the Board. On July 30, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Respondents entered into a settlement

[1] The order also severed and remanded Case 7–RC–20163.

agreement that provided for the withdrawal of any answer in the event of noncompliance with the settlement agreement, and such noncompliance has occurred. Accordingly, we find that the Respondents' answers have been withdrawn by the terms of the settlement agreement reached on October 17, 1995, and that, as further provided in the settlement agreement, all the allegations of the complaint are true. See *U-Bee, Ltd*., 315 NLRB 667 (1994).

Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent M. E. Young Co. (Respondent Young), a corporation with offices and places of business in Taylor, Michigan, has been engaged in the installation and service of heating and air-conditioning equipment. During the 1992 calendar year, in conducting its business operations, Respondent Young derived gross revenues in excess of $500,000 and purchased and received at its Taylor, Michigan facilities goods valued in excess of $50,000 from enterprises within the State of Michigan, which in turn purchased the goods and supplies directly from points located outside the State of Michigan and caused the goods to be shipped directly to their Michigan facilities.

At all material times, Respondent Team Recon (Respondent Recon), a Michigan corporation with an office and place of business located at 7815 Telegraph Road, Taylor, Michigan, has been engaged in the commercial and residential construction industry. On December 3, 1993, Respondent Recon was established by Respondent Young as a disguised continuation of Respondent Young. Based on this conduct, Respondent Young and Respondent Recon are, and have been at all material times, alter egos and a single employer within the meaning of the Act.

Respondent Mark E. Young (Respondent Mark Young) has been, at all material times, the sole stockholder and corporate president of both Respondent Young and Respondent Recon and their principal managerial official. Respondent Mark Young personally participated in and made the decisions to carry out the alleged unfair labor practice violations set forth below.

Respondents Young, Recon, and Mark Young are now, and have been at all material times, individually and jointly, employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. At all material times the Unions have been labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About August 20, 1993, Marcus Collins engaged in concerted activities with other employees for the purpose of mutual aid and protection by complaining and/or protesting the cancellation of health insurance by the Respondent.

About August 23, 1993, the Respondents told Collins and other employees that Collins was discharged because Collins ''ambushed'' the Respondent by his protected concerted activities.

About September 11, 1993, the Respondents told employees that four other employees had been laid off because of their sympathies for, and activities on behalf of, the Unions. About the same date, the Respondents threatened an employee that it would lay off and/or discharge any employees who signed union cards, thereby discouraging employees' sympathies for, and activities on behalf of, the Unions.

About August 23, 1993, the Respondents discharged Collins because he engaged in the conduct described above and to discourage employees from engaging in these or other concerted activities.

About September 10, 1993, the Respondents laid-off employees Larry Isaacs, Michael D. Isaacs, James D. Lockemy, and Richard D. Martens. About September 20, 1993, the Respondents constructively discharged James Stratton. About October 18, 1993, the Respondents constructively discharged employee Robert B. Lawson. The Respondents engaged in this conduct because of the named employees' sympathies for, and activities on behalf of, the Unions.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondents have interfered with, restrained, and coerced employees in the exercise of their Section 7 rights, and have thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act. By discharging, laying off, and constructively discharging employees, the Respondents also have been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging employees from engaging in concerted activities and discouraging their membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action

designed to effectuate the policies of the Act.[2] Specifically, having found that the Respondents have violated Section 8(a)(3) and (1) by discharging Marcus Collins, constructively discharging James Stratton and Robert B. Lawson, and laying off Larry Isaacs, Michael D. Isaacs, James D. Lockemy, and Richard D. Martens, we shall order the Respondents to offer the discriminatees immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondents shall also be required to expunge from their files any and all references to the unlawful discharges, constructive discharges and layoffs, and to notify the discriminatees in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondents, The M. E. Young Co., Team Recon, Inc., Taylor, Michigan, their officers, agents, successors, and assigns, and Respondent Mark E. Young, an individual, jointly and severally, shall

1. Cease and desist from

(a) Telling employees that an employee was discharged because he ''ambushed'' the Respondent by his protected concerted activities.

(b) Telling employees that four other employees had been laid off because of their sympathies for, and activities on behalf of, the Unions.

(c) Threatening employees that it would lay off and/or discharge any employees who signed union cards, thereby discouraging employees' sympathies for, and activities on behalf of, the Unions.

(d) Discharging employees because they engage in concerted activities with other employees for the purpose of mutual aid and protection by complaining and/or protesting the cancellation of health insurance by the Respondent or to discourage employees from engaging in these or other concerted activities.

(e) Discharging, constructively discharging or laying off employees because of employees' sympathies for, or activities on behalf of, the Unions.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Marcus Collins, James Stratton, Robert B. Lawson, Larry Isaacs, Michael D. Isaacs, James D. Lockemy, and Richard D. Martens full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Marcus Collins, James Stratton, Robert B. Lawson, Larry Isaacs, Michael D. Isaacs, James D. Lockemy, and Richard D. Martens whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful discharges, constructive discharges, and layoffs, and within 3 days thereafter notify the discriminatees in writing that this has been done and that the discharges, constructive discharges, and layoffs will not be used against them in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Taylor, Michigan, copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondents' authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices

[2] As indicated above, the complaint also names Mark Young as a Respondent and alleges that he is an ''employer'' under the Act on the basis that he is the sole stockholder, president, and principal managerial official of both of the corporate Respondents and that he personally participated in and made the decisions to carry out the unfair labor practices. Based on these uncontested allegations, we find it appropriate to also specifically require Respondent Mark Young, as the agent of the corporate Respondents primarily responsible for the unfair labor practices, to comply with the Order. See, e.g., *Loren Service*, 208 NLRB 763, 769 (1974), and cases cited there. In addition, based on the specific terms of the settlement agreement, we find it appropriate to hold Respondent Mark Young jointly and severally liable with the other Respondents for any backpay due the discriminatees. Thus, par. 4 of the settlement specifically states that the backpay due the discriminatees shall be paid by ''M. E. Young Co., Team Recon, Incorporated, and Mark E. Young, I, an individual, jointly and severally.'' Further, as quoted above, par. 5 of the settlement provides that in the event of noncompliance, the ''Board may then issue an Order providing full remedy for the violations . . . found . . . including but not limited to the provisions of this Settlement Agreement.''

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since September 13, 1993.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT tell employees that an employee was discharged because he ''ambushed'' us by his protected concerted activities.

WE WILL NOT tell employees that four other employees had been laid off because of their sympathies for, and activities on behalf of, the Plumbers Local Union No. 98 and Pipefitters Local Union No. 636, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO.

WE WILL NOT threaten employees that we would lay off and/or discharge any employees who signed union cards, thereby discouraging employees' sympathies for, and activities on behalf of, the Unions.

WE WILL NOT discharge employees because they engage in concerted activities with other employees for the purpose of mutual aid and protection by complaining and/or protesting the cancellation of health insurance by us or to discourage employees from engaging in these or other concerted activities.

WE WILL NOT discharge, constructively discharge or lay off employees because of employees' sympathies for, or activities on behalf of, the Unions.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer Marcus Collins, James Stratton, Robert B. Lawson, Larry Isaacs, Michael D. Isaacs, James D. Lockemy, and Richard D. Martens full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Marcus Collins, James Stratton, Robert B. Lawson, Larry Isaacs, Michael D. Isaacs, James D. Lockemy, and Richard D. Martens whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest.

WE WILL, within 14 days from the date of this Order, remove from our files any and all references to the unlawful discharges, constructive discharges, and layoffs, and within 3 days thereafter notify the discriminatees in writing that this has been done and that the discharges, constructive discharges or layoffs will not be used against them in any way.

THE M. E. YOUNG CO. AND/OR TEAM RECON, INCORPORATED AND MARK E. YOUNG